

SOUTHERN UNION EXPLORATION CO.

IBLA 83-517

Decided February 16, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting a high bid for parcel 6 in competitive oil and gas lease sale. NM-56214.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to ascertain the existence of a rational basis for the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a rational basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data to establish a rational basis therefor cannot support rejection of the high bid for the parcel.

APPEARANCES: Dennis K. Morgan, Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Southern Union Exploration Company (SX) has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated March 21, 1983, rejecting its high bid of \$67.81 per acre for parcel 6 in a competitive oil and gas sale held on February 15, 1983. Parcel 6 contains 79.42 acres

and is described as lots 3 and 4, sec. 30, T. 26 N., R. 11 W., New Mexico principal meridian, San Juan County, New Mexico. The decision appealed from advised appellant that its high bid was being rejected because the Minerals Management Service (MMS) ^{1/} had determined that the bid was inadequate based on their presale evaluation.

The supporting memorandum from the Deputy Minerals Manager, BLM, to the Chief, Oil and Gas Section, BLM, appears in the case file. The memorandum discloses that of the 77 parcels advertised in the lease sale, the high bids on 54 of the tracts were higher than the presale evaluation and the high bids on 23 tracts were lower than the presale evaluation. With respect to the high bids in the latter group, the recommendation was made to accept bids for 18 of the parcels and to reject the bids for five of the tracts including parcel 6. A document entitled "Recommendation for Rejection of High Bid on Parcel No. 6," which accompanied the aforementioned memorandum, states in pertinent part as follows:

This parcel is located along a trend of excellent Dakota producers to the southeast, east and northeast. The Dakota is identified in a well about 3/8 mile to the southeast of the parcel in section 31. This well was completed in the Dakota May 22, 1981 and then worked over and recompleted in the Gallup. There was a reported test of 19 barrels of oil and 2,361 Mcf gas per day from this well. There is a Pictured Cliffs trend to the southwest of the parcel with a well about 3/8 mile to the west.

A discounted cash flow based on Dakota wells to the east of the parcel included a decline rate between 15% and 33%, reserves between 1,443,035 Mcf and 4,277,646 Mcf, drilling costs between \$407,000 and \$497,500, annual operating costs between \$9,000 and \$10,500 and the price between \$2.39 and \$4.66.

On appeal appellant argues:

The bid rejection letter of March 21, 1983, did not furnish SX with sufficient facts upon which SX could determine the reasonableness of the basis for its determination. Although the MMS made a "conservative estimate based upon Dakota production" resulting in "a pre-sale estimate higher than the high bid", SX was not furnished the estimate, nor the production data forming that basis, nor the method used for arriving at the estimate. The only information furnished SX was that the parcel "is located along a trend of excellent Dakota producers to the southwest,

^{1/} The reference to MMS in the decision was outdated. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the MMS within BLM. 48 FR 8982 (Mar. 2, 1983). Although this order was amended on Feb. 7, 1983, the amendment is not relevant to this discussion.

east and northwest," and that the Dakota was identified in an unnamed well identified as being "about 3/8 mile to the southeast of the parcel in Section 31." The daily production results of a reported test of this single unnamed well were the sole production data offered. A discounted cash flow which was purportedly calculated was not disclosed, although it was based on unidentified "Dakota wells to the east." Certain conclusions were made as to decline rate, reserves, drilling costs, annual operating costs and price. Unfortunately, SX may only speculate as to the basis for these conclusions.

[1, 2] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (Supp. V 1981); 43 CFR 3120.3-1 (1982). ^{2/} This Board has consistently upheld that authority so long as the record discloses a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. TXO Production Corp., 73 IBLA 258 (1983); Harold R. Leeds, 60 IBLA 383 (1981); Harry Ptasynski, 48 IBLA 246 (1980); Frances J. Richmond, 29 IBLA 137 (1977).

The Secretary is entitled to rely upon the reasoned analysis of his technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Southern Union Exploration Co., *supra*; Charles E. Hinkle, 40 IBLA 250 (1979). The Board stated in Southern Union Exploration Co., 51 IBLA 89, 92 (1980):

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

The Board has held that the record should include the estimated minimum value as well as the underlying factual data from which the estimated value is derived. Southern Union Exploration Co., 51 IBLA at 95. The Board will not

^{2/} The oil and gas leasing regulations were revised and recodified effective Aug. 22, 1983. A provision with similar effect now appears at 43 CFR 3120.5. 48 FR 33681 (July 22, 1983).

substitute its judgment for that of BLM in determining fair market value for parcel 6 but it will require sufficient facts and analysis to ensure that a rational basis for the determination is present. Read & Stevens, Inc., 75 IBLA 121, 123 (1983); TXO Production Corp., *supra* at 261; M. Robert Paglee, 68 IBLA 231, 234 (1982).

The case is therefore remanded to BLM for amplification of the record and readjudication of appellant's bid in light of the record. At the least the record should specify the presale evaluation of the parcel, the identity of the wells upon which this evaluation is based, and the underlying data upon which the value is based (to the extent this is not proprietary information prohibited by law from disclosure). The standard which the record must meet is the provision of a rational basis for the determination which can be verified on administrative review.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for action consistent with this decision.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

